



# House of Representatives

General Assembly

**File No. 311**

January Session, 2009

Substitute House Bill No. 6529

*House of Representatives, March 30, 2009*

The Committee on Insurance and Real Estate reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE LICENSING AND REGULATION OF THIRD-PARTY ADMINISTRATORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2009*) As used in sections 1 to  
2       16, inclusive, of this act:

3       (1) "Adjuster" means an individual who investigates or settles loss  
4       claims. "Adjuster" does not include an employee of an insurer who  
5       investigates or settles claims incurred under insurance contracts  
6       written by the insurer or an affiliated insurer.

7       (2) "Affiliate" or "affiliated" has the same meaning as provided in  
8       section 38a-1 of the general statutes.

9       (3) "Business entity" means a corporation, a limited liability  
10      company or any other similar form of business organization, whether  
11      for profit or nonprofit.

12       (4) "Collateral" means funds, letters of credit or any item with  
13 economic value, not owned by the insurer or third-party administrator  
14 but held by the insurer or third-party administrator in the event such  
15 collateral needs to be used to fulfill premium or loss reimbursement  
16 obligations in accordance with a contract between the insurer and the  
17 owner of the collateral. "Collateral" includes anticipated loss  
18 prepayments made prior to the payment of losses, pursuant to  
19 arrangements where reimbursement is not due until after losses have  
20 been paid.

21       (5) "Commissioner" means the Insurance Commissioner.

22       (6) "Control" or "controlled by" has the same meaning as provided  
23 in section 38a-1 of the general statutes.

24       (7) "Insurance producer" has the same meaning as provided in  
25 section 38a-702a of the general statutes.

26       (8) "Insurer" or "insurance company" means any person or  
27 combination of persons doing any kind or form of insurance business  
28 other than a fraternal benefit society, and includes a captive insurance  
29 company, as defined in section 38a-91aa of the general statutes, a  
30 captive insurer as defined in section 38-91k of the general statutes, a  
31 licensed insurance company, a medical service corporation, a hospital  
32 service corporation, a health care center, and a consumer dental plan  
33 that provides employee welfare benefits on a self-funded basis or as  
34 defined in section 38a-577 of the general statutes.

35       (9) "NAIC" means the National Association of Insurance  
36 Commissioners.

37       (10) "Payor" means an insurer, an employer administering its  
38 employee benefit plan or the employee benefit plan of an affiliated  
39 employer under common management and control.

40       (11) "Person" has the same meaning as provided in section 38a-1 of  
41 the general statutes.

42 (12) "Professional employer organization" has the same meaning as  
43 provided in section 31-221a of the general statutes.

44 (13) "Stop loss coverage" means insurance that protects an employer  
45 or other person responsible for a self-insured health or life benefit plan  
46 against higher than expected obligations under the plan.

47 (14) "Third-party administrator" means any person who directly or  
48 indirectly underwrites, collects charges, collateral or premiums from,  
49 pays or processes claims on, or uses the services of a licensed adjuster  
50 or an attorney admitted to the practice of law in this state to adjust or  
51 settle claims by residents of this state in connection with, insured or  
52 self-insured programs that, excluding workers' compensation, provide  
53 life, annuity, health, accident or accident and sickness coverage, or  
54 employee benefit stop loss coverage. A person shall not be considered  
55 a third-party administrator if such person is among the following:

56 (A) A person working for a third-party administrator to the extent  
57 that the person's activities are subject to the supervision and control of  
58 the third-party administrator;

59 (B) An employer administering its employee benefit plan or the  
60 employee benefit plan of an affiliated employer under common  
61 management and control, except that workers' compensation shall not  
62 be considered an employee benefit plan;

63 (C) A union administering a benefit plan on behalf of its members;

64 (D) An insurer that is licensed in this state or is acting as an  
65 authorized insurer with respect to insurance lawfully issued to cover a  
66 Connecticut resident, and sales representatives thereof;

67 (E) An insurance producer selling insurance or engaged in related  
68 activities within the scope of the producer's license;

69 (F) A creditor acting on behalf of its debtors with respect to  
70 insurance covering a debt between the creditor and its debtors;

71 (G) A trust and its trustees and agents acting pursuant to such trust  
72 established in conformity with 29 USC Section 186, as amended from  
73 time to time;

74 (H) A trust exempt from taxation under Section 501(a) of the  
75 Internal Revenue Code of 1986, or any subsequent corresponding  
76 internal revenue code of the United States, as amended from time to  
77 time, and its trustees acting pursuant to such trust, or a custodian and  
78 the custodian's agents acting pursuant to a custodian account that  
79 meets the requirements of Section 401(f) of the Internal Revenue Code  
80 of 1986, or any subsequent corresponding internal revenue code of the  
81 United States, as amended from time to time;

82 (I) A credit union or a financial institution that is subject to  
83 supervision or examination by federal or state banking authorities, or a  
84 mortgage lender, when collecting or remitting premiums to licensed  
85 insurance producers, limited lines producers or authorized payors in  
86 connection with loan payments;

87 (J) A credit card issuing company advancing or collecting insurance  
88 premiums or charges from its credit card holders who have authorized  
89 collection;

90 (K) An individual adjusting or settling claims in the normal course  
91 of such individual's practice or employment as an attorney at law and  
92 who does not collect charges or premiums in connection with  
93 insurance coverage;

94 (L) A trade or professional association exempt from taxation under  
95 Section 501 of the Internal Revenue Code of 1986, or any subsequent  
96 corresponding internal revenue code of the United States, as amended  
97 from time to time, that is administering a trust, as set forth in  
98 subparagraphs (G) and (H) of this subdivision, or a benefit plan, on  
99 behalf of its members;

100 (M) An adjuster who is licensed in this state or is not subject to the  
101 licensure requirements of chapter 702 of the general statutes and

102 whose activities are limited to adjusting claims;

103 (N) A business entity that is affiliated with a licensed insurer and  
104 only acts as a third-party administrator for the direct and assumed  
105 insurance business of the affiliated insurer, if the insurer acknowledges  
106 in writing to the commissioner that such insurer is responsible for the  
107 acts of the entity and will provide all of the entity's books and records  
108 to the commissioner upon request; or

109 (O) A pharmacy benefits manager registered under section 38a-  
110 479bbb of the general statutes.

111 (15) "Underwrites" or "underwriting" means, but is not limited to,  
112 the acceptance of employer or individual applications for coverage of  
113 individuals in accordance with the written rules of the payor,  
114 association, trust or self-funded plan, and the overall planning and  
115 coordination of a benefits program.

116 (16) "Uniform application" means the current version of the  
117 National Association of Insurance Commissioners' Uniform  
118 Application for Third Party Administrators.

119 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) No person shall offer to  
120 act as or hold himself out to be a third-party administrator in this state  
121 unless such person is licensed pursuant to section 11 of this act, or is  
122 exempted from licensure pursuant to subsection (b) of this section.  
123 This requirement shall not apply to a person employed by a third-  
124 party administrator to the extent that such person's activities are under  
125 the supervision and control of the third-party administrator. The  
126 authority granted to a third-party administrator pursuant to sections 1  
127 to 10, inclusive, of this act shall not exempt such third-party  
128 administrator's employees from the licensing requirements of chapters  
129 701b and 702 of the general statutes.

130 (b) An insurer that underwrites, collects charges, collateral or  
131 premiums from, or adjusts or settles claims for other than its  
132 policyholders, subscribers and certificate holders shall be subject to

133 sections 1 to 16, inclusive, of this act, except that such insurer shall be  
134 exempt from sections 11, 13 and 14 of this act, provided such activities  
135 only involve the lines of insurance for which it is licensed as an insurer  
136 in this state.

137 (c) No third-party administrator shall act as such without a written  
138 agreement between such third-party administrator and a payor, which  
139 shall be retained as part of the official records of both the third-party  
140 administrator and the payor for the duration of such agreement and  
141 for five years thereafter. The agreement shall contain all provisions  
142 required by this section, except insofar as those provisions that do not  
143 apply to the functions performed by the third-party administrator.

144 (d) The written agreement set forth in subsection (c) of this section  
145 shall include a statement of duties that the third-party administrator  
146 shall perform on behalf of the payor and the lines, classes or types of  
147 insurance for which the third-party administrator is authorized to  
148 administer. The agreement shall include provisions with respect to  
149 underwriting, claims handling and other standards pertaining to  
150 activities to be administered by the third-party administrator.

151 (e) In the event of a dispute between the third-party administrator  
152 and the payor regarding the fulfillment of a lawful obligation with  
153 respect to a policy, certificate or claim subject to the written agreement,  
154 the payor shall fulfill such obligation.

155 Sec. 3. (NEW) (*Effective October 1, 2009*) Any insurance premiums or  
156 charges paid to a third-party administrator by or on behalf of the  
157 insured party and any collateral furnished to the third-party  
158 administrator by or on behalf of the insured party shall be deemed to  
159 have been received by the insurer. The return of collateral or the  
160 payment of return premiums or claim payments forwarded by the  
161 insurer to the third-party administrator shall not be deemed to have  
162 been paid to the insured party or claimant until such collateral or  
163 payments have been received by the insured party or claimant.  
164 Nothing in this section shall limit any right of the insurer against the  
165 third-party administrator resulting from the failure of the third-party

166 administrator to make payments to the insurer, insured parties or  
167 claimants.

168       Sec. 4. (NEW) (*Effective October 1, 2009*) (a) A third-party  
169 administrator shall maintain and make available to a payor with which  
170 such third-party administrator has entered into a written agreement  
171 pursuant to subsection (c) of section 2 of this act complete books and  
172 records of all transactions performed on behalf of such payor. The  
173 books and records shall be maintained in accordance with prudent  
174 standards of insurance recordkeeping and shall be maintained for a  
175 period of not less than five years from the date of their creation.

176       (b) The payor shall own any records generated by the third-party  
177 administrator pertaining to the payor, except that the third-party  
178 administrator shall retain the right to access such books and records to  
179 permit the third-party administrator to fulfill all of its contractual  
180 obligations to insured parties, claimants and the payor.

181       (c) Notwithstanding subsection (a) of this section, if the payor or the  
182 third-party administrator cancels the agreement specified in subsection  
183 (c) of section 2 of this act, the third-party administrator may, by  
184 written agreement with the payor, transfer all records to a new third-  
185 party administrator in lieu of retaining them for five years. The new  
186 third-party administrator shall acknowledge, in writing, that it is  
187 responsible for retaining the records of the prior third-party  
188 administrator as required in subsection (a) of this section.

189       Sec. 5. (NEW) (*Effective October 1, 2009*) A third-party administrator  
190 who advertises on behalf of an insurer or professional employer  
191 organization shall only use advertising that has been approved, in  
192 writing, by the payor prior to its use. A third-party administrator that  
193 mentions any customer in its advertising shall obtain such customer's  
194 prior written consent.

195       Sec. 6. (NEW) (*Effective October 1, 2009*) (a) No third-party  
196 administrator shall determine the benefits, premium rates, collateral  
197 and reimbursement procedures, underwriting criteria and claims

198 payment procedures applicable to life, annuity, health, accident or  
199 accident and sickness coverage, or employee benefit stop loss  
200 coverage, or secure reinsurance or stop loss coverage unless the payor  
201 includes specific standards for such functions in the written agreement  
202 set forth in subsection (c) of section 2 of this act or by reference in such  
203 agreement.

204 (b) The payor shall establish and maintain methods to identify a  
205 responsible person of the third-party administrator when the payor is  
206 contacted by a claimant, representative of a claimant or by the  
207 Insurance Department.

208 (c) The payor shall provide competent administration of its  
209 programs.

210 (d) When a third-party administrator administers benefits in  
211 connection with life, annuity, health, accident or accident and sickness  
212 coverage, or employee benefit stop loss coverage, that cover more than  
213 one hundred certificate holders, subscribers, claimants, employees or  
214 policyholders, the insurer shall annually conduct an on-site review of  
215 the operations of the third-party administrator. The costs of such  
216 reviews or audits shall be borne by the insurer and shall not be  
217 reimbursed by the third-party administrator.

218 (e) The requirements of this section shall apply to any insurer that  
219 delegates administrative functions to a person exempt from licensure  
220 pursuant to section 2 of this act.

221 Sec. 7. (NEW) (*Effective October 1, 2009*) (a) All insurance charges,  
222 premiums, collateral and loss reimbursements collected by a third-  
223 party administrator on behalf of or for a payor, the return of premiums  
224 or collateral received from a payor, and any funds held by the third-  
225 party administrator for the payment of claims, shall be held by the  
226 third-party administrator in a fiduciary capacity. Funds shall be  
227 immediately remitted to the person entitled to them or shall be  
228 deposited promptly in a fiduciary account established and maintained  
229 by the third-party administrator in a federally insured financial

230 institution. The written agreement between the third-party  
231 administrator and the payor shall provide for the third-party  
232 administrator to render an accounting to the payor periodically,  
233 detailing all transactions performed by the third-party administrator  
234 pertaining to the business of the payor.

235 (b) The third-party administrator shall keep copies of all records of  
236 any fiduciary account maintained or controlled by the third-party  
237 administrator, and, upon request of a payor, shall furnish such payor  
238 with copies of the records pertaining to the deposits and withdrawals  
239 made on behalf of the payor. If funds deposited in a fiduciary account  
240 have been collected on behalf of or for more than one payor, or for the  
241 payment of claims associated with more than one policy, the third-  
242 party administrator shall keep records clearly recording the deposits in  
243 and withdrawals from the account on behalf of each payor and relating  
244 to each policyholder.

245 (c) The third-party administrator shall not pay any claim from its  
246 own funds nor by withdrawals from a fiduciary account in which  
247 premiums or charges are deposited. Withdrawals from such account  
248 shall be made as provided in the written agreement set forth in  
249 subsection (c) of section 2 of this act and only for the following  
250 purposes: (1) Remittance to a payor entitled to remittance; (2) deposit  
251 in an account maintained in the name of the payor; (3) transfer to or  
252 deposit in a claims-paying account, with claims to be paid as provided  
253 in subsection (d) of this section; (4) payment to a group policyholder  
254 for remittance to the payor entitled to such remittance; (5) payment to  
255 the third-party administrator of its earned commissions, fees or  
256 charges; (6) remittance of a return premium to the person or persons  
257 entitled to such return premium; and (7) payment to other service  
258 providers as authorized by the payor.

259 (d) The third-party administrator shall pay claims from funds  
260 collected on behalf of or for a payor only as authorized by the payor.  
261 Payments from an account in which such funds are deposited and that  
262 is maintained or controlled by the third-party administrator shall be

263 made only for the following purposes: (1) Payment of valid claims; (2)  
264 payment to the third-party administrator or to other service providers  
265 approved by the payor of expenses associated with claims handling;  
266 (3) remittance to the payor or transfer to a successor third-party  
267 administrator as directed by the payor, for the purpose of paying  
268 claims and associated expenses; or (4) return of funds held as collateral  
269 or prepayment to the person entitled to those funds, upon a  
270 determination by the payor that those funds are no longer necessary to  
271 secure or facilitate the payment of claims and associated expenses.

272 Sec. 8. (NEW) (*Effective October 1, 2009*) (a) A third-party  
273 administrator shall not enter into an agreement or understanding with  
274 a payor that makes or has the effect of making the amount of the third-  
275 party administrator's commissions, fees, or charges contingent upon  
276 savings effected in the adjustment, settlement or payment of losses  
277 covered by the payor's obligations. This provision shall not prohibit a  
278 third-party administrator from receiving performance-based  
279 compensation, as defined in the written agreement set forth in  
280 subsection (c) of section 2 of this act, for providing hospital or other  
281 auditing services or from providing managed care or related services.

282 (b) A payor shall not enter into an agreement with a third-party  
283 administrator in violation of this section.

284 (c) This section shall not prevent the compensation of a third-party  
285 administrator from being based on premiums or charges collected or  
286 the number of claims paid or processed.

287 Sec. 9. (NEW) (*Effective October 1, 2009*) (a) When the services of a  
288 third-party administrator are utilized, such third-party administrator  
289 shall provide a written notice, approved by the payor, to covered  
290 individuals advising them of the identity of, and relationship among,  
291 the third-party administrator, the policyholder and the payor.

292 (b) When a third-party administrator collects funds, the reason for  
293 collection of each item shall be identified to the insured party and each  
294 item shall be shown separately from any premium. Additional charges

295 shall not be made for services to the extent the services have been paid  
296 for by the payor.

297 (c) The third-party administrator shall disclose to the payor all  
298 charges, fees and commissions that the third-party administrator  
299 receives arising from services it provides for the payor, including any  
300 fees or commissions paid by payors providing reinsurance or stop loss  
301 coverage.

302 Sec. 10. (NEW) (*Effective October 1, 2009*) Any policies, certificates,  
303 booklets, termination notices or other written communications  
304 delivered by the payor to the third-party administrator for delivery to  
305 insured parties or covered individuals shall be delivered by the third-  
306 party administrator promptly after receipt of instructions from the  
307 payor to deliver them.

308 Sec. 11. (NEW) (*Effective October 1, 2009*) (a) A third-party  
309 administrator applying for licensure shall submit an application to the  
310 commissioner by using the uniform application and paying a fee  
311 pursuant to section 38a-11 of the general statutes, as amended by this  
312 act. The uniform application shall include or be accompanied by the  
313 following information and documents: (1) All basic organizational  
314 documents of the applicant, including any articles of incorporation,  
315 articles of association, partnership agreement, trade name certificate,  
316 trust agreement, shareholder agreement and other applicable  
317 documents and all amendments to such documents; (2) the bylaws,  
318 rules, regulations or similar documents regulating the internal affairs  
319 of the applicant; (3) a NAIC biographical affidavit for the individuals  
320 responsible for the conduct of affairs of the applicant, including (A) all  
321 members of the board of directors, board of trustees, executive  
322 committee or other governing board or committee; (B) the principal  
323 officers in the case of a corporation or the partners or members in the  
324 case of a partnership, association or limited liability company; (C) any  
325 shareholders or member holding directly or indirectly ten per cent or  
326 more of the voting stock, voting securities or voting interest of the  
327 applicant; and (D) any other person who exercises control or influence

328 over the affairs of the applicant; (4) audited annual financial  
329 statements or reports for the two most recent fiscal years that prove the  
330 applicant has a positive net worth. If the applicant has been in  
331 existence for less than two fiscal years, the uniform application shall  
332 include financial statements or reports, certified by an officer of the  
333 applicant and prepared in accordance with generally accepted  
334 accounting principles, for any completed fiscal years and for any  
335 month during the current fiscal year for which such financial  
336 statements or reports have been completed. An audited annual  
337 financial statement or report prepared on a consolidated basis shall  
338 include a columnar consolidating or combining worksheet that shall be  
339 filed with the report and include the following: (A) Amounts shown on  
340 the consolidated audited financial report shall be shown on the  
341 worksheet; (B) amounts for each entity shall be stated separately; and  
342 (C) explanations of consolidating and eliminating entries shall be  
343 included. The applicant shall include such other information as the  
344 commissioner may require to review the current financial condition of  
345 the applicant; (5) a statement describing the business plan including  
346 information on staffing levels and activities proposed in this state and  
347 nationwide. The plan shall provide details setting forth the applicant's  
348 capability for providing a sufficient number of experienced and  
349 qualified personnel in the areas of claims processing, recordkeeping  
350 and underwriting; and (6) such other pertinent information as may be  
351 required by the commissioner.

352 (b) A third-party administrator applying for licensure shall make  
353 available for inspection by the commissioner copies of all contracts  
354 with payors or other persons utilizing the services of the third-party  
355 administrator.

356 (c) A third-party administrator applying for licensure shall produce  
357 its accounts, records and files for examination and shall make its  
358 officers available to give information with respect to its affairs, as often  
359 as is reasonably required by the commissioner.

360 (d) The commissioner may refuse to issue a license if the

361 commissioner determines that the third-party administrator or any  
362 individual responsible for the conduct of affairs of the third-party  
363 administrator is not competent, trustworthy, financially responsible or  
364 of good personal and business reputation, or has had an insurance or a  
365 third-party administrator certificate of authority or license denied or  
366 revoked for cause by any jurisdiction, or if the commissioner  
367 determines that any of the grounds set forth in section 14 of this act  
368 exists with respect to the third-party administrator.

369 (e) Any license issued to a third-party administrator shall be in force  
370 until September thirtieth in each year, unless sooner revoked or  
371 suspended as provided in this section. The license may be renewed, at  
372 the discretion of the commissioner, upon payment of the fee specified  
373 in section 38a-11 of the general statutes, as amended by this act,  
374 without the resubmission of the detailed information required in the  
375 original application.

376 (f) A third-party administrator licensed or applying for licensure  
377 under this section shall immediately notify the commissioner of any  
378 material change in its ownership, control or other fact or circumstance  
379 affecting its qualification for a license in this state.

380 (g) A third-party administrator licensed or applying for a license  
381 under this section that administers or will administer governmental or  
382 church self-insured plans in this state or any other state shall maintain  
383 a surety bond, for use by the commissioner and the insurance  
384 regulatory authority of any additional state in which the third-party  
385 administrator is authorized to conduct business, to cover individuals  
386 and persons who have remitted premiums or insurance charges or  
387 other moneys to the third-party administrator in the course of the  
388 third-party administrator's business, in the greater of the following  
389 amounts: (1) One hundred thousand dollars; or (2) ten per cent of the  
390 aggregate total amount of self-funded coverage under governmental  
391 plans or church plans handled in this state and all additional states in  
392 which the third-party administrator is authorized to conduct business.

393 Sec. 12. (NEW) (*Effective October 1, 2009*) A person who is not

394 required to be licensed as a third-party administrator under section 11  
395 of this act and who directly or indirectly underwrites, collects charges  
396 or premiums from, or adjusts or settles claims on residents of this state,  
397 only in connection with life, annuity or health coverage provided by a  
398 self-funded plan other than governmental or church plans, shall  
399 annually register with the commissioner not later than October first on  
400 a form designated by the commissioner.

401     Sec. 13. (NEW) (*Effective October 1, 2009*) (a) Each third-party  
402 administrator licensed under section 11 of this act shall file an annual  
403 report for the preceding calendar year with the commissioner on or  
404 before July first of each year or within such extension of time as the  
405 commissioner may grant for good cause. The annual report shall  
406 include an audited financial statement performed by an independent  
407 certified public accountant. An audited annual financial statement or  
408 report prepared on a consolidated basis shall include a columnar  
409 consolidating or combining worksheet that shall be filed with the  
410 report and include the following: (1) Amounts shown on the  
411 consolidated audited financial report shall be shown on the worksheet;  
412 (2) amounts for each entity shall be stated separately; and (3)  
413 explanations of consolidating and eliminating entries shall be  
414 included. The report shall be in the form and contain such information  
415 as the commissioner prescribes and shall be verified by at least two  
416 officers of the third-party administrator.

417     (b) The annual report shall include the complete names and  
418 addresses of all payors with which the third-party administrator had  
419 agreements during the preceding fiscal year.

420     (c) At the time of filing the annual report, the third-party  
421 administrator shall pay a filing fee pursuant to section 38a-11 of the  
422 general statutes, as amended by this act.

423     (d) The commissioner shall review the most recently filed annual  
424 report of each third-party administrator on or before September first of  
425 each year. Upon completion of its review, the commissioner shall: (1)  
426 Issue a certification to the third-party administrator that the annual

427 report shows the third-party administrator has a positive net worth as  
428 evidenced by audited financial statements and is currently licensed  
429 and in good standing, or noting any deficiencies found in such annual  
430 report or financial statements; or (2) update any electronic database  
431 maintained by the National Association of Insurance Commissioners,  
432 its affiliates or subsidiaries, indicating that the annual report shows the  
433 third-party administrator has a positive net worth as evidenced by  
434 audited financial statements and complies with existing law, or noting  
435 any deficiencies found in such annual report or financial statements.

436 Sec. 14. (NEW) (*Effective October 1, 2009*) (a) The commissioner shall  
437 suspend or revoke the license of a third-party administrator, or shall  
438 issue a cease and desist order if the third-party administrator does not  
439 have a license if, after notice and hearing, the commissioner finds that  
440 the third-party administrator: (1) Is in an unsound financial condition;  
441 (2) is using such methods or practices in the conduct of its business so  
442 as to render its further transaction of business in this state hazardous  
443 or injurious to insured persons or the public; or (3) has failed to pay  
444 any judgment rendered against it in this state within sixty days after  
445 the judgment has become final.

446 (b) The commissioner may suspend or revoke the license of a third-  
447 party administrator, or may issue a cease and desist order if the third-  
448 party administrator does not have a license if, after notice and hearing,  
449 the commissioner finds that the third-party administrator: (1) Has  
450 violated any lawful rule or order of the commissioner or any provision  
451 of the insurance laws of this state; (2) (A) has refused to give  
452 information with respect to its affair; (B) has refused to perform any  
453 other legal obligation as to an examination, when required by the  
454 commissioner; or (C) has refused to be examined or to produce its  
455 accounts, records and files for examination, or if any individual  
456 responsible for the conduct of affairs of the third-party administrator,  
457 including (i) members of the board of directors, board of trustees,  
458 executive committee or other governing board or committee; (ii) the  
459 principal officers in the case of a corporation or the partners or  
460 members in the case of a partnership, association or limited liability

461 company; (iii) any shareholder or member holding directly or  
462 indirectly ten per cent or more of the voting stock, voting securities or  
463 voting interest of the third-party administrator; and (iv) any other  
464 person who exercises control or influence over the affairs of the third-  
465 party administrator; (3) has, without just cause, refused to pay proper  
466 claims or perform services arising under its contracts or has, without  
467 just cause, caused covered individuals to accept less than the amount  
468 due or caused covered individuals to employ attorneys or bring suit  
469 against the third-party administrator or a payor that it represents to  
470 secure full payment or settlement of such claims; (4) is required,  
471 pursuant to sections 1 to 11, inclusive, of this act, to have a license and  
472 fails at any time to meet any qualification for which issuance of a  
473 license could have been refused had the failure then existed and been  
474 known to the commissioner, unless the commissioner issued a license  
475 with knowledge of the ground for disqualification and had the  
476 authority to waive it; (5) has any individual who is responsible for the  
477 conduct of its affairs, including (A) members of the board of directors,  
478 board of trustees, executive committee or other governing board or  
479 committee; (B) the principal officers in the case of a corporation or the  
480 partners or members in the case of a partnership, association or limited  
481 liability company; (C) any shareholder or member holding directly or  
482 indirectly ten per cent or more of its voting stock, voting securities or  
483 voting interest; and (D) any other person who exercises control or  
484 influence over its affairs, who has been convicted of or has entered a  
485 plea of guilty or nolo contendere to a felony, without regard to  
486 whether adjudication was withheld; (6) is under suspension or  
487 revocation in another state; or (7) has failed to file a timely annual  
488 report pursuant to section 13 of this act. The provisions of this  
489 subsection shall not apply to a third-party administrator that is an  
490 insurer that is exempt pursuant to subsection (b) of section 2 of this act.  
491 In addition to or in lieu of suspension or revocation of the license of a  
492 third-party administrator and in addition to any other penalties  
493 provided by law, the commissioner may impose a civil penalty not to  
494 exceed fifty thousand dollars for each violation set forth in this  
495 subsection.

496 (c) (1) The commissioner may, without advance notice and before a  
497 hearing, issue an order immediately suspending the license of a third-  
498 party administrator, or may issue a cease and desist order if the third-  
499 party administrator does not have a license, if the commissioner finds  
500 that one or more of the following circumstances exist: (A) The third-  
501 party administrator is insolvent or impaired; (B) a proceeding for  
502 receivership, conservatorship, rehabilitation or other delinquency  
503 proceeding regarding the third-party administrator has been  
504 commenced in any state; or (C) the financial condition or business  
505 practices of the third-party administrator otherwise pose an imminent  
506 threat to the public health, safety or welfare of the residents of this  
507 state.

508 (2) At the time the commissioner issues an order pursuant to  
509 subdivision (1) of this subsection, the commissioner shall serve notice  
510 to the third-party administrator that such third-party administrator  
511 may request a hearing not later than ten business days after the receipt  
512 of the order. If a hearing is requested, the commissioner shall schedule  
513 a hearing not later than ten business days after receipt of the request. If  
514 a hearing is not requested and the commissioner does not choose to  
515 hold one, the order shall remain in effect until modified or vacated by  
516 the commissioner.

517 (d) If the commissioner finds that one or more grounds exist for the  
518 suspension or revocation of a license issued under sections 1 to 11,  
519 inclusive, of this act, or for a cease and desist order, the commissioner  
520 may, in lieu of or in addition to the suspension, revocation or cease  
521 and desist order, impose a fine upon the third-party administrator.

522 Sec. 15. Subsection (a) of section 38a-15 of the general statutes is  
523 repealed and the following is substituted in lieu thereof (*Effective*  
524 *October 1, 2009*):

525 (a) The commissioner shall, as often as [he] the commissioner deems  
526 it expedient, undertake a market conduct examination of the affairs of  
527 any insurance company, health care center, third-party administrator  
528 or fraternal benefit society doing business in this state.

529       Sec. 16. (NEW) (*Effective October 1, 2009*) The Insurance  
530 Commissioner may adopt regulations, in accordance with chapter 54  
531 of the general statutes, to implement the provisions of sections 1 to 14,  
532 inclusive, of this act.

533       Sec. 17. Subsection (a) of section 38a-11 of the general statutes is  
534 repealed and the following is substituted in lieu thereof (*Effective*  
535 *October 1, 2009*):

536       (a) The commissioner shall demand and receive the following fees:  
537 (1) For the annual fee for each license issued to a domestic insurance  
538 company, one hundred dollars; (2) for receiving and filing annual  
539 reports of domestic insurance companies, twenty-five dollars; (3) for  
540 filing all documents prerequisite to the issuance of a license to an  
541 insurance company, one hundred seventy-five dollars, except that the  
542 fee for such filings by any health care center, as defined in section 38a-  
543 175, shall be one thousand one hundred dollars; (4) for filing any  
544 additional paper required by law, fifteen dollars; (5) for each certificate  
545 of valuation, organization, reciprocity or compliance, twenty dollars;  
546 (6) for each certified copy of a license to a company, twenty dollars; (7)  
547 for each certified copy of a report or certificate of condition of a  
548 company to be filed in any other state, twenty dollars; (8) for  
549 amending a certificate of authority, one hundred dollars; (9) for each  
550 license issued to a rating organization, one hundred dollars. In  
551 addition, insurance companies shall pay any fees imposed under  
552 section 12-211; (10) a filing fee of twenty-five dollars for each initial  
553 application for a license made pursuant to section 38a-769; (11) with  
554 respect to insurance agents' appointments: (A) A filing fee of twenty-  
555 five dollars for each request for any agent appointment, except that no  
556 filing fee shall be payable for a request for agent appointment by an  
557 insurance company domiciled in a state or foreign country which does  
558 not require any filing fee for a request for agent appointment for a  
559 Connecticut insurance company; (B) a fee of forty dollars for each  
560 appointment issued to an agent of a domestic insurance company or  
561 for each appointment continued; and (C) a fee of twenty dollars for  
562 each appointment issued to an agent of any other insurance company

563 or for each appointment continued, except that no fee shall be payable  
564 for an appointment issued to an agent of an insurance company  
565 domiciled in a state or foreign country which does not require any fee  
566 for an appointment issued to an agent of a Connecticut insurance  
567 company; (12) with respect to insurance producers: (A) An  
568 examination fee of seven dollars for each examination taken, except  
569 when a testing service is used, the testing service shall pay a fee of  
570 seven dollars to the commissioner for each examination taken by an  
571 applicant; (B) a fee of forty dollars for each license issued; (C) a fee of  
572 forty dollars per year, or any portion thereof, for each license renewed;  
573 and (D) a fee of forty dollars for any license renewed under the  
574 transitional process established in section 38a-784; (13) with respect to  
575 public adjusters: (A) An examination fee of seven dollars for each  
576 examination taken, except when a testing service is used, the testing  
577 service shall pay a fee of seven dollars to the commissioner for each  
578 examination taken by an applicant; and (B) a fee of one hundred  
579 twenty-five dollars for each license issued or renewed; (14) with  
580 respect to casualty adjusters: (A) An examination fee of ten dollars for  
581 each examination taken, except when a testing service is used, the  
582 testing service shall pay a fee of ten dollars to the commissioner for  
583 each examination taken by an applicant; (B) a fee of forty dollars for  
584 each license issued or renewed; and (C) the expense of any  
585 examination administered outside the state shall be the responsibility  
586 of the entity making the request and such entity shall pay to the  
587 commissioner one hundred dollars for such examination and the  
588 actual traveling expenses of the examination administrator to  
589 administer such examination; (15) with respect to motor vehicle  
590 physical damage appraisers: (A) An examination fee of forty dollars  
591 for each examination taken, except when a testing service is used, the  
592 testing service shall pay a fee of forty dollars to the commissioner for  
593 each examination taken by an applicant; (B) a fee of forty dollars for  
594 each license issued or renewed; and (C) the expense of any  
595 examination administered outside the state shall be the responsibility  
596 of the entity making the request and such entity shall pay to the  
597 commissioner one hundred dollars for such examination and the

598 actual traveling expenses of the examination administrator to  
599 administer such examination; (16) with respect to certified insurance  
600 consultants: (A) An examination fee of thirteen dollars for each  
601 examination taken, except when a testing service is used, the testing  
602 service shall pay a fee of thirteen dollars to the commissioner for each  
603 examination taken by an applicant; (B) a fee of two hundred dollars for  
604 each license issued; and (C) a fee of one hundred twenty-five dollars  
605 for each license renewed; (17) with respect to surplus lines brokers: (A)  
606 An examination fee of ten dollars for each examination taken, except  
607 when a testing service is used, the testing service shall pay a fee of ten  
608 dollars to the commissioner for each examination taken by an  
609 applicant; and (B) a fee of five hundred dollars for each license issued  
610 or renewed; (18) with respect to fraternal agents, a fee of forty dollars  
611 for each license issued or renewed; (19) a fee of thirteen dollars for  
612 each license certificate requested, whether or not a license has been  
613 issued; (20) with respect to domestic and foreign benefit societies shall  
614 pay: (A) For service of process, twenty-five dollars for each person or  
615 insurer to be served; (B) for filing a certified copy of its charter or  
616 articles of association, five dollars; (C) for filing the annual report, ten  
617 dollars; and (D) for filing any additional paper required by law, three  
618 dollars; (21) with respect to foreign benefit societies: (A) For each  
619 certificate of organization or compliance, four dollars; (B) for each  
620 certified copy of permit, two dollars; and (C) for each copy of a report  
621 or certificate of condition of a society to be filed in any other state, four  
622 dollars; (22) with respect to reinsurance intermediaries: A fee of five  
623 hundred dollars for each license issued or renewed; (23) with respect  
624 to life settlement providers: (A) A filing fee of thirteen dollars for each  
625 initial application for a license made pursuant to section 38a-465a; and  
626 (B) a fee of twenty dollars for each license issued or renewed; (24) with  
627 respect to life settlement brokers: (A) A filing fee of thirteen dollars for  
628 each initial application for a license made pursuant to section 38a-465a;  
629 and (B) a fee of twenty dollars for each license issued or renewed; (25)  
630 with respect to preferred provider networks, a fee of two thousand five  
631 hundred dollars for each license issued or renewed; (26) with respect  
632 to rental companies, as defined in section 38a-799, a fee of forty dollars

633 for each permit issued or renewed; (27) with respect to medical  
 634 discount plan organizations licensed under section 38a-479rr, a fee of  
 635 five hundred dollars for each license issued or renewed; (28) with  
 636 respect to pharmacy benefits managers, an application fee of fifty  
 637 dollars for each registration issued or renewed; (29) with respect to  
 638 captive insurance companies, as defined in section 38a-91aa, a fee of  
 639 three hundred dollars for each license issued or renewed; [and] (30)  
 640 with respect to each duplicate license issued a fee of twenty-five  
 641 dollars for each license issued; and (31) with respect to third-party  
 642 administrators, as defined in section 1 of this act, (A) a fee of five  
 643 hundred dollars for each license issued, (B) a fee of three hundred fifty  
 644 dollars for each license renewal, and (C) a fee of one hundred dollars  
 645 for each annual report filed pursuant to section 13 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	New section
Sec. 2	October 1, 2009	New section
Sec. 3	October 1, 2009	New section
Sec. 4	October 1, 2009	New section
Sec. 5	October 1, 2009	New section
Sec. 6	October 1, 2009	New section
Sec. 7	October 1, 2009	New section
Sec. 8	October 1, 2009	New section
Sec. 9	October 1, 2009	New section
Sec. 10	October 1, 2009	New section
Sec. 11	October 1, 2009	New section
Sec. 12	October 1, 2009	New section
Sec. 13	October 1, 2009	New section
Sec. 14	October 1, 2009	New section
Sec. 15	October 1, 2009	38a-15(a)
Sec. 16	October 1, 2009	New section
Sec. 17	October 1, 2009	38a-11(a)

**Statement of Legislative Commissioners:**

References to "sections 2 to ..." were changed to "sections 1 to ..." for accuracy, section 1 (8) was rewritten for accuracy, and section 15 was rewritten for accuracy.

**INS**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Insurance Dept.	GF - Revenue Gain	\$30,000 - \$60,000	\$45,000 - \$90,000

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

This bill results in a revenue gain to the General Fund of \$30,000 to \$60,000 in FY 10 and \$45,000 to \$90,000 in FY 11 through the Department of Insurance's ("DOI's") collection of fees related to the licensing of third-party administrators in the state. It requires third-party administrators to be licensed in the state, for which an initial license fee of \$200 is assessed, a renewal fee of \$350, and an annual report filing fee of \$100. It is estimated that at least 100 third-party administrators operate in Connecticut. The low-end of the projected revenue is based on 100 third-party administrators in the state and the high-end is based on 200 third-party administrators in the state.

#### **The Out Years**

The fiscal impact identified above would continue into the future subject to the number of third party administrators that are licensed in the state.

Source: DOI Public Hearing Testimony 2/24/2009

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**OLR Bill Analysis****sHB 6529*****AN ACT CONCERNING THE LICENSING AND REGULATION OF  
THIRD-PARTY ADMINISTRATORS.*****SUMMARY:**

The bill establishes a licensing system for third-party administrators (TPA), requiring them to submit an application to the insurance commissioner including organizational documents, internal affairs documents, biographical affidavits, audited financial statements, a statement describing their business plan, and other pertinent information. It requires licensees to maintain a surety bond, submit annual financial reports, and pay application and annual fees. It authorizes the commissioner to collect \$500 for each license issued, \$350 for each license renewal, and \$100 for each annual report filed.

The bill requires a TPA to enter a written agreement with a payor before performing duties on the payor's behalf and hold certain amounts in a fiduciary capacity. It prohibits a TPA from entering into an agreement that would make the TPA's commissions, fees, or charges contingent on savings in the adjustment, settlement, or payment of losses.

The bill authorizes the commissioner to suspend or revoke a TPA's license, or issue a cease and desist order if the TPA does not have a license, after notice and hearing.

The bill creates standards for payors, and requires payors to fulfill obligations with respect to the written agreement. A TPA must maintain books and records of transactions made on the payor's behalf and make them available to the payor for inspection for at least five years after creation. The payor owns any record the TPA generates pertaining to the payor.

The bill authorizes the insurance commissioner to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2009

### **§ — 1 THIRD-PARTY ADMINISTRATOR**

The bill defines a TPA as a person who, for certain insured or self-insured programs, directly or indirectly (1) underwrites; (2) collects charges, collateral, or premiums, (3) pays or processes claims; or (4) uses the services of a licensed adjuster or an attorney admitted to practice in Connecticut to adjust or settle Connecticut residents' claims. The programs, excluding workers' compensation, provide life, annuity, health, accident, accident and sickness, or employee benefit stop-loss coverage.

The bill excludes from the definition of TPA:

1. a person working for a TPA to the extent that his or her activities are subject to the TPA's supervision and control;
2. an employer administering its employee benefit plan or that of an affiliated employer under common management and control, except that workers' compensation is not considered an employee benefit plan;
3. a union administering a benefit plan on its members' behalf;
4. an insurer licensed in Connecticut or acting as an authorized insurer with respect to insurance lawfully issued to cover a Connecticut resident, and its sales representatives;
5. an insurance producer selling insurance or engaged in related activities within the scope of his or her license;
6. a creditor acting on its debtors' behalf with respect to insurance covering a debt between the creditor and its debtors;
7. a trust and its trustees and agents acting pursuant to a trust

established under federal law which restricts financial transactions with labor organizations;

8. A tax-exempt trust (see BACKGROUND) and its trustees, or a custodian and the custodian's agents acting pursuant to an account meeting federal requirements for custodial accounts and contracts treated as qualified trusts;
9. A mortgage lender, credit union, or financial institution subject to supervision or examination by federal or state banking authorities, when collecting or remitting premiums to licensed insurance producers, limited lines producers, or authorized payors in connection with loan payments;
10. a credit card company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;
11. an individual adjusting or settling claims in the normal course of his or her practice or employment as an attorney who does not collect charges or premiums in connection with insurance coverage;
12. a tax-exempt trade or professional association administering a trust meeting the restrictions on financial transactions with labor organizations, custodial accounts, and contracts treated as qualified trusts or a benefit plan on its members' behalf;
13. an adjuster licensed in Connecticut or not subject to state license requirements whose activities are limited to adjusting claims;
14. a for-profit or nonprofit business entity, defined as a corporation, a limited liability company, or similar form of business organization affiliated with a licensed insurer that only acts as a TPA for the direct and assumed insurance business of the affiliated insurer, if the insurer acknowledges in writing to the commissioner that it (a) is responsible for the entity's actions and (b) will provide all of the entity's books and records to the

commissioner upon request; and

15. a pharmacy benefits manager registered with the insurance commissioner. (The law defines a “pharmacy benefits manager” as any person who administers the prescription drug, prescription device, pharmacist services, or prescription drug and device and pharmacist services portion of a health benefit plan on behalf of plan sponsors, such as self-insured employers, insurance companies, labor unions, and health care centers (i.e.; HMO).)

### ***Underwriting***

The bill defines “underwriting” as (1) accepting applications from employers or individuals for coverage in accordance with the written rules of the payor, association, trust, or self-funded plan and (2) the overall planning and coordination of a benefits program.

### ***Adjuster***

The bill defines “adjuster” as a person who investigates or settles loss claims, not including an insurer’s employee who investigates or settles claims incurred under insurance contracts the insurer or an affiliated insurer writes.

### ***Insurer***

The bill defines an “insurer” as a person or people doing insurance business, including a captive insurer, a licensed insurance company, a medical or hospital service corporation, an HMO, or a consumer dental plan, that provides employee welfare benefits on a self-funded basis. It excludes a fraternal benefit society.

### ***Payor***

The bill defines a “payor” as an insurer or an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control.

### ***Stop–Loss Coverage***

The bill defines “stop-loss coverage” as insurance protecting an

employer that self-insures a health or life benefit plan against higher than expected plan obligations.

***Collateral***

The bill defines “collateral” as funds, letters of credit, or any item with economic value the insurer or TPA does not own but holds in the event it needs to be used to fulfill premium or loss reimbursement obligations under a contract between the insurer and the collateral’s owner, including anticipated loss prepayments made before the payment of losses, pursuant to arrangements where reimbursement is not due until after losses have been paid.

**§ 2 — LICENSE REQUIREMENT**

The bill prohibits a person from offering to act as, or hold himself out to be, a TPA in Connecticut unless he or she is licensed or exempt from licensure under the bill. This requirement does not apply to a TPA’s employee to the extent that his or her activities are under the TPA’s supervision and control. The authority the bill gives to a TPA does not exempt him or her from the licensing requirements regarding public adjusters, casualty adjusters, motor vehicle physical damage appraisers, certified insurance consultants, surplus lines brokers, or any other insurance-related occupation for which the commissioner deems a license necessary.

An insurer that underwrites; collects charges, collateral, or premiums from; or adjusts or settles claims, except for its policyholders, subscribers, and certificate holders, is subject to the bill’s requirements, excluding the provisions relating to licensing, annual reporting, and enforcement, if these activities involve only the lines of insurance for which it is licensed as an insurer in Connecticut.

***Written Agreement***

No TPA may act without a written agreement with the payor. The agreement must be kept as part of the official records of both the TPA and the payor until five years after the contract ends. The agreement must contain all of the following provisions, except to the extent they

do not apply to the functions the TPA performs.

The written agreement must include (1) a statement of duties that the TPA must perform on the payor's behalf; (2) the lines, classes, or types of insurance the TPA is authorized to administer; and (3) all provisions with respect to underwriting, claims handling, and other activities the TPA will administer.

### ***Disputes Regarding Lawful Obligations***

If there is a dispute between the TPA and the payor regarding the fulfillment of a lawful obligation with respect to a policy, certificate, or claim subject to the written agreement, the payor must fulfill the obligation.

## **§ 3 — PAYMENTS TO INSURERS**

The bill specifies that any insurance premiums or charges paid or collateral furnished to a TPA by an insured party or on its behalf are deemed to have been received by the insurer. The return of collateral or the payment of "return premiums" or claims the insurer forwards to the TPA are not deemed to have been paid to the insured party or claimant until the insured party or claimant receives them. The bill specifies that it does not limit an insurer's rights against the TPA resulting from the TPA's failure to pay the insurer, insured parties, or claimants.

## **§ 4 — BOOKS AND RECORDS OF TRANSACTIONS PERFORMED ON PAYOR'S BEHALF**

The bill requires a TPA to maintain and make available to a payor with which it contracts complete books and records of all transactions performed on the payor's behalf. The books and records must be maintained (1) in accordance with prudent standards of insurance recordkeeping and (2) for at least five years after they were created.

Under the bill, the payor owns any records the TPA generates pertaining to the payor, except that the TPA retains the right to access the books and records to fulfill its contractual obligations to insured parties, claimants, and the payor.

If the payor or TPA cancels the agreement, the TPA may, by written agreement with the payor, transfer all records to a new TPA instead of retaining them for five years. The new TPA must acknowledge, in writing, that it is responsible for retaining these records.

## **§ 5 — ADVERTISING BY TPAS**

The bill requires a TPA who advertises on an insurer's or professional employer organization's behalf to use only advertising that the payor approved, in writing, before its use. A TPA that mentions any customer in its advertising must obtain the customer's prior written consent.

## **§ 6 — PAYOR STANDARDS**

The bill prohibits TPAs from (1) determining the benefits, premium rates, collateral and reimbursement procedures, underwriting criteria, and claims payment procedures applicable to life, annuity, health, accident, accident and sickness, or employee benefit stop-loss coverage or (2) securing reinsurance or stop-loss coverage, unless the payor includes, or refers to, specific standards for doing so in the written agreement.

The payor must establish and maintain methods to identify a TPA's responsible person when the payor is contacted by a claimant, a claimant's representative, or the Insurance Department. The bill requires the payor to competently administer its programs.

When a TPA administers benefits in connection with life, annuity, health, accident, accident and sickness, or employee benefit stop-loss coverage that covers more than 100 certificate holders, subscribers, claimants, employees, or policyholders, the insurer must annually review the TPA's operations. The insurer must pay for the costs of the on-site reviews and cannot be reimbursed by the TPA.

The bill also applies these requirements to an insurer that delegates administrative functions to a person who is exempt from TPA licensure.

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**§ 7 — FIDUCIARY CAPACITY**

The bill requires the TPA to hold in a fiduciary capacity:

1. all insurance charges, premiums, collateral, and loss reimbursements it collects on behalf of or for a payor,
2. return premiums or collateral received from a payor, and
3. any funds it holds for claim payments.

The bill requires that funds be (1) immediately returned to the person entitled to them or (2) deposited promptly in a fiduciary account the TPA establishes and maintains in a federally insured financial institution. The written agreement between the TPA and the payor must provide for the TPA to render a periodic accounting to the payor, detailing all transactions the TPA performed pertaining to the payor's business.

***Record Maintenance***

The bill requires the TPA to keep copies of all records of any fiduciary account it maintained or controlled on a payor's behalf and, at a payor's request, give the payor copies of the deposit and withdrawal records. If funds deposited in a fiduciary account have been collected on behalf of, or for more than one, payor, or for the payment of claims associated with more than one policy, the TPA must keep records clearly recording the account deposits and withdrawals on each payor's behalf relating to each policyholder.

***Paying Claims***

The bill prohibits a TPA from paying any claim from its own funds or by withdrawing funds from a fiduciary account in which premiums or charges are deposited. It requires that withdrawals from such an account be made as provided in the TPA's written agreement and only for the following purposes:

1. remittance to a payor entitled to remittance;
2. deposit in an account maintained in the payor's name;

3. transfer or deposit to a claims-paying account, with claims to be paid as the bill provides;
4. payment to a group policyholder for remittance to the payor entitled to the remittance;
5. payment to the TPA of its earned commissions, fees, or charges;
6. remittance of a return premium to the person entitled to it; and
7. payment to other service providers as the payor authorizes.

The TPA must pay claims from funds collected for or on behalf of a payor only as the payor authorizes. Payments from an account in which such funds are deposited and that the TPA maintains and controls must be made only to:

1. pay valid claims;
2. pay the TPA or other service providers the payor approved for expenses associated with claims handling;
3. remit to the payor, or transfer to a successor TPA as directed by the payor, for the purpose of paying claims and associated expenses; or
4. return funds held as collateral or prepayment to the person entitled to them, upon the payor's determination that the funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

## **§ 8 — COMPENSATION**

The bill prohibits a TPA from entering into an agreement or understanding with a payor that makes or has the effect of making the TPA's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, or payment of losses covered by the payor's obligations. The bill specifies that this prohibition does not prevent a TPA from receiving performance-based compensation, as

defined in the written agreement, for providing(1) hospital or other auditing services or (2) providing managed care or related services.

A payor may not enter into an agreement with a TPA that violates this prohibition. The bill specifies that this prohibition does not prevent a TPA's compensation from being based on premiums or charges collected or the number of claims paid or processed.

## **§ 9 — NOTICE AND DISCLOSURE**

The bill requires that when a TPA's services are used, the TPA must provide a written, payor-approved notice to covered individuals advising them of its identity and the relationship among the TPA, policyholder, and payor.

The bill requires a TPA, when it collects funds, to inform the insured person of the reasons for the fund. It must show these charges separately from any premium. Additional charges are prohibited to the extent the payor has paid for the services.

The bill requires the TPA to disclose to the payor all charges, fees, and commissions that it receives arising from services it provides the payor, including any fees or commissions paid by payors providing reinsurance or stop loss coverage.

## **§ 10 — PROMPTLY DELIVER WRITTEN COMMUNICATIONS**

The bill requires a TPA to deliver promptly written communications on the payor's behalf. The TPA must deliver, promptly after receiving instructions from the payor, any policies, certificates, booklets, termination notices, or other written communications the payor delivers to the TPA for delivery to insured parties or covered individuals.

## **§ 11 — TPA LICENSING PROCESS**

The bill requires a TPA applying for a license to (1) submit a completed application to the commissioner (by using the current version of the "National Association of Insurance Commissioners' (NAIC) Uniform Application for Third Party Administrators") and (2)

pay the required fee.

The application must include or be accompanied by the following information and documents:

1. the applicant's basic organizational documents, including any articles of incorporation or association; partnership, trust, or shareholder agreement; trade name certificate; and other applicable documents;
2. the bylaws, rules, regulations, or similar documents regulating the applicant's internal affairs;
3. an NAIC biographical affidavit for the people responsible for the applicant's affairs, including (a) all members of the board of directors, board of trustees, executive committee, or other governing board or committee; (b) the principal officers in the case of a corporation, or the partners or members in the case of a partnership, association, or limited liability company; (c) any shareholder or member directly or indirectly holding 10% or more of its stock, securities, or interest; and (d) any other person who exercises control or influence over the applicant's affairs;
4. audited annual financial statements or reports for the two most recent fiscal years that prove the applicant has a positive net worth (see below);
5. a statement describing the business plan, which must include (a) information on staffing levels and activities proposed in Connecticut and nationwide and (b) provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel for claims processing, recordkeeping, and underwriting; and
6. other pertinent information the commissioner may require.

***Applicants in Existence for Less than Two Fiscal Years***

If the applicant has been in existence for less than two fiscal years,

the uniform application must include financial statements or reports, certified by an officer of the applicant and prepared in accordance with generally accepted accounting principles, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited annual financial statement or report prepared on a consolidated basis must include a "columnar consolidating or combining worksheet" that must be filed with the report and include the following:

1. amounts shown on the consolidated audited financial report;
2. amounts for each entity, stated separately;
3. explanations of consolidating and eliminating entries; and
4. other information the commissioner may require to review the applicant's current financial condition.

The bill requires a TPA applying for a license to make available for the commissioner's inspection copies of all contracts with payors or others using the TPA services.

A TPA applying for licensure must produce its accounts, records, and files for examination and make its officers available to give information concerning its affairs, as often as the commissioner reasonably requires.

The commissioner may refuse to issue a license if he determines that:

1. the TPA or any individual responsible for conducting its affairs is not competent, trustworthy, financially responsible, or of good personal and business reputation;
2. the TPA has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction; or
3. any of the grounds the bill sets forth relating to the enforcement requirements existing with respect to the TPA.

Any license issued to a TPA is in force until September 30<sup>th</sup> in each year, unless revoked or suspended before that date. The commissioner, at his discretion, may renew a TPA license on payment of the required fee without having the TPA reapply.

A TPA licensed or applying for licensure must immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license.

A TPA licensed or applying for a license that administers or will administer self-insured government or church plans must maintain a surety bond, for use by the commissioner and the insurance regulatory authority of any additional state in which the TPA is authorized to conduct business, to cover people who have remitted premiums, insurance charges, or other money to the TPA in the course of the TPA's business, in an amount equal to the greater of: (1) \$100,000 or (2) 10% of the aggregate total amount of self-funded coverage under government or church plans handled in Connecticut and all additional states in which the TPA is authorized to conduct business.

## **§ 12 — REGISTRATION REQUIREMENT**

A person who is not required to be licensed as a TPA who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims for, Connecticut residents, only in connection with life, annuity, or health coverage a self-funded plan provides, other than government or church plans, must annually register with the commissioner by October 1 on a form he designates.

## **§ 13 — ANNUAL REPORT**

Each licensed TPA must file an annual report with the commissioner for the preceding calendar year by July 1 each year or within an extension of time the commissioner may grant for good cause. The annual report must include a financial statement audited by an independent certified public accountant. The bill requires that an audited annual financial statement or report prepared on a consolidated basis must include a "columnar consolidating or

combining worksheet” that must be filed with the report and include the following:

1. amounts shown on the consolidated audited financial report;
2. amounts for each entity, stated separately; and
3. explanations of consolidating and eliminating entries.

The report must be in the form, and contain the information as, the commissioner prescribes. At least two officers of the TPA must verify it.

The annual report must include the complete names and addresses of all payors with which the TPA had agreements during the preceding fiscal year. The TPA must pay the required filing fee when the annual report is filed.

The bill requires the commissioner to review each TPA’s most recently filed annual report on or before September 1 of each year. After its review, the commissioner must:

1. issue a certification to the TPA that the annual report shows it has a positive net worth as evidenced by audited financial statements and that it is currently licensed and in good standing, or noting any deficiencies found in the annual report or financial statements, or
2. update any electronic database the NAIC, or its affiliates or subsidiaries, maintains, indicating that the annual report shows the TPA has a positive net worth as evidenced by audited financial statements and complies with existing law, or noting any deficiencies found in the annual report or financial statements.

## **§ 14 — ENFORCEMENT**

The bill requires the commissioner to suspend or revoke a TPA’s license, or issue a cease and desist order if the TPA does not have a

license, after notice and hearing, if he finds that the TPA:

1. is financially unsound;
2. is using methods or practices in conducting its business that render its further business in Connecticut hazardous or injurious to insured persons or the public; or
3. has failed to pay any judgment rendered against it in Connecticut within 60 days after the judgment became final.

The bill authorizes the commissioner to (1) suspend or revoke a TPA's license, or issue a cease and desist order if the TPA does not have a license, after notice and hearing, (2) impose other penalties the law allows, (3) impose a fine of \$50,000 for each violation, or (4) any combination of these, if he finds that the TPA is not exempt from the bill's provisions and:

1. has violated any (a) lawful rule or order of the commissioner or (b) provision of applicable Connecticut insurance laws;
2. has refused to give information with respect to its affairs;
3. has refused to perform any legal obligation with respect to an examination the commissioner requires; or
4. has refused to be examined or produce its accounts, records, and files, or any individual responsible for its affairs for examination, including (a) members of the board of directors, board of trustees, executive committee, or other governing board or committee; (b) the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; (c) any 10% shareholder or member; and (d) any other person who exercises control or influence over its affairs;
5. has, without just cause, refused to pay proper claims or perform services arising under its contracts or caused covered

individuals to accept less than the amount due or employ attorneys or bring suit against the TPA or a payor it represents to secure full payment or settlement of the claims;

6. is required to have a license and fails at any time to meet any license qualification, unless the commissioner issued a license with knowledge of the ground for disqualification and had the authority to waive it;
7. has a person responsible for its affairs, including (a) members of the board of directors, board of trustees, executive committee, or other governing board or committee; (b) the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; (c) any 10% shareholder or member; and (d) any other person who exercises control or influence over its affairs, who has been convicted of, or pled guilty or no contest to, a felony, without regard to whether adjudication was withheld;
8. is under suspension or revocation in another state; or
9. has failed to file an annual report in a timely manner.

The commissioner may, without advance notice and before a hearing, issue an order immediately suspending a TPA's license, or a cease and desist order if the TPA does not have a license, if he finds that:

1. the TPA is insolvent or impaired;
2. another state has started a proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA; or
3. the TPA's financial condition or business practices pose an imminent threat to the public health, safety, or welfare of Connecticut residents.

When the commissioner issues an order suspending a license, or issues a cease and desist order, he must serve notice to the TPA that it may request a hearing within 10 business days after receiving the order. If a hearing is requested, the commissioner must schedule a hearing within 10 business days after receiving the request. If a hearing is not requested and the commissioner does not choose to hold one, the order remains in effect until the commissioner modifies or vacates it.

### ***Other Penalties***

If the commissioner finds that one or more grounds exist to suspend or revoke a TPA license under the bill's provisions, or for a cease and desist order, he may, instead of or in addition to the suspension, revocation, or cease and desist order, impose a fine on the TPA. (It is unclear if the fine is the \$50,000 per violation, as above, or some other amount.)

## **§ 15 — MARKET CONDUCT EXAMINATION**

The bill authorizes the commissioner, as often as he deems it expedient, to examine a TPA's market conduct in Connecticut, in accordance with law.

## **§ 16 — ADOPTION OF REGULATIONS**

The bill authorizes the insurance commissioner to adopt implementing regulations.

## **§ 17 — FEES**

The bill authorizes the commissioner to collect the following fees from a TPA:

1. \$500 for each license issued,
2. \$350 for each license renewal, and
3. \$100 for each annual report filed.

## **BACKGROUND**

### ***Internal Revenue Code § 501***

Section 501 of the Internal Revenue Code establishes categories of tax-exempt entities, including charities; fraternal benevolent societies; certain retirement funds; recreational clubs; state-sponsored health coverage organizations; civic leagues; religious and apostolic organizations; and qualified pension, profit-sharing, and stock bonus plans.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea    18        Nay   0        (03/12/2009)